BOOK REVIEWS.

SCIENCE OF LEGAL METHOD—Selected Essays by Various Authors, translated by Ernest Bruncken and Layton B. Register. Pp. LLXXXiii, 593. Boston: The Boston Book Co., 1917.

This is the ninth volume in the Modern Legal Philosophy Series and perhaps the most important of them all. It consists of a series of essays by the most distinguished legal philosophers in the world. The scope of the work may be judged by the following list of the essays here translated and published. (1) Judicial Freedom of Decision—Its Necessity and Method by François Gény, Professor of Civil Law at the University of Nancy; (2) Judicial Freedom of Decision: Its Principles and Objects, by Eugen Ehrlich, Professor of Roman Law at the University of Czernowitz; (3) Dialecticism and Technicality: The Need of Sociological Method by Johann Georg Gonelin, Justice of the Court of Appeals at Stuttgart; (4) Equity and Law: Judicial Freedom of Decision by Géza Kiss, Professor of Law at the Law School of Nagyvarad, Hungary; (5) The Perils of Emotionalism: Sentimental Administration of Justice—Its Relation to Judicial Freedom of Decision, by Fritz Berolzheimer; (6) Judicial Interpretation of an Enacted Law by Josef Kohler, Professor at the University of Berlin; (7) Courts and Legislation by Roscoe Pound; Dean of the Harvard University Law School; (8) The Operation of the Judicial Function in English Law, by Heinrich B. Gerland, Professor in the University of Jena; (9) Codified Law and Case Law. Their part in shaping the Policies of Justice, by Édouard Lambert, Professor of History of Law at the University of Lyons; (10) Methods of Juridical Thinking by Carl Georg Wurzel; (11) Methods for Scientific Codification by Alexander Alvarez, Professor of Comparative Civil Law at the University of Santiago, Chili; (12) The Legislative Technic of Modern Civil Codes, by François Gény; (13) Scientific Method in Legislative Drafting by Ernst Freund, Professor of Law in the University of Chicago.

As may be seen from this list of titles, the great problem to which the book is largely devoted is the consideration of the problem of judicial freedom of decision, its method and its scope. This leads to the consideration of the distinction between the judicial and the legislative function, an investigation of the history of the separation and differentiation of these functions and how the resultant problems may best be met. All of the writers in this work oppose the doctrine that mere logic and precedent are sufficient in the decision of controversies and in varying form they discuss the additional elements which modern legal philosophy recognizes, namely, judicial discretion, originality, the social factor and common sense. It is taken for granted by all of these authors that the object of legal procedure is to promote justice and not merely to decide controversies. The number of topics discussed in this series of brilliant essays make it impossible to enter upon a detailed review of any of them. Perhaps the interest of the work may be best suggested by a selection of a few of the problems to which attention is given. What is the best use of decided cases? Why is one judge's decision more important than another? Why is not only the laity

but also the bar almost totally ignorant of the processes and impelling causes of law? Is it better to have statutes than judicial precedents to limit judicial discretion? Is it necessary to continue the use of legal fictions? Is the theory of the separation of the legislative and judicial functions sound?

No one can rise from a reading of this work without a rather depressing sense of the gulf that separates the practising bench and bar from the scientific legal thinker. It is perhaps too much to hope that this work and the other books in the modern legal philosophy series will become popular with the profession but it can hardly be doubted that until the thought that is represented in these volumes breaks its way into the practical mind there will be little hope of the cultivation of law as a science and we may look forward to its further practice as the private business of the members of the bar.

THE ARMY AND THE LAW. By Garrard Glenn. Pp. 197. New York: Columbia University Press, 1918. Price, $1.75.

It has frequently been observed that military law is treated as an exotic, a stranger to our system of common law, called in because of a special necessity, and to be treated as a highly specialized branch of the law having no direct relation with the rest of our system, but such studies as that of Professor Page, in 32 Harvard Law Review, p. 349, go far toward dispelling this notion and explain its origin as well as its relation to the civil law. Another recent illuminating article is that of Professor Lobb, in 3 Minnesota Law Review, p. 105. Differing from other writers who are especially concerned with the military law, Professor Glenn undertakes to show the relation of the military establishment to the law of the land, more particularly to define the relation of the army to the common law. In so doing, he has taken a cross cut through many fields of the law, using a method similar to that which resulted in his splendid contribution to the science of commercial law in his book, "Creditors' Rights and Remedies," which was reviewed in the June, 1915, number of the UNIVERSITY OF PENNSYLVANIA LAW REVIEW. The topical headings of his chapters indicate the scope of the work: Introductory, The Constitution of the Army, Military Law and Military Courts, The Army's Right of Self-Regulation, The Army in Its Relations with the Enemy, Military Occupation in Matters of Government, Military Occupation in Matters of Property, Relation of Soldier to Civilian in Time of Peace, Relation of Soldier to Civilian in Time of War, Martial Law at Home.

Within the army, the soldier is entirely subject to military law. Upon his entry into the army, the common law loses its jurisdiction over him for the change of status means change of legal obligation. The decision of the court martial to which the soldier is subject is not reviewable by a common law court. The present agitation in favor of changes of the rules of the courts martial indicates an overwhelming sentiment in favor of the methods of the civil courts. The social readjustment, which has manifested itself in Russia and Germany and elsewhere, undermining the authority of the military system, is reflected here in the severe criticism to which our mili-